



Contractors – Who Pays the Tax?

This is the introduction to a free, seven-part, online class about sales and use tax. It's designed for contractors, suppliers, and tax professionals who have clients working in the construction industry in Idaho.

The first section gives you an overview of who's responsible for paying sales and use tax on construction jobs in Idaho. The other sections in this series are: "What is Real Property?", "When a Contractor is Also a Retailer," "What Purchases are Taxable for Contractors?", "The Irrigation Exemption," "The Clean Room Exemption," and "The Pollution Exemption." Throughout these classes, we use the term "prime contractor" for general contractor, and "subcontractor" for specialty contractor.

Idaho law says contractors are the end users, or consumers, of all the equipment, tools, and supplies they use to build, improve, repair, or alter real property. In Idaho, this includes real property improvements contractors make to property owned by individuals, businesses, churches, educational institutions, state agencies, and the federal government. If you're a contractor, you owe tax on the materials you use, even if you don't resell the improved property.

Some examples of contractors who improve real property are bricklayers, carpetlayers, drywall installers, painters, plumbers, electricians, roofers, garage door installers, HVAC contractors, mechanical contractors, landscapers, and well drillers.

If you're a contractor who bought or received equipment and materials that no one paid sales or use tax for, then you owe use tax on the purchase. Use tax is calculated at the same rate as sales tax.

The tax is due as soon as you have the right to use or store the property or have the right to direct someone else to use or store the property. If tax was paid to another state at a rate equal to or greater than Idaho's sales tax, then you don't owe Idaho tax on the materials purchased.

However, if you improperly paid tax on materials to another state, you owe use tax to Idaho. If this happens, you need to apply for a refund from the state where the tax was improperly paid.

For example, let's say you're a contractor who buys materials from a supplier in California. The supplier ships the materials directly to Idaho and incorrectly charges you California sales tax. You don't owe the California tax because you didn't receive the goods in that state. Although you don't owe California sales tax, you are responsible for Idaho use tax because you used or stored the materials in Idaho. You should request a refund from California.

Here are some possible scenarios that a contractor might run into:

Scenario 1:

If you're a contractor, and you buy the materials to install into real property yourself, then only you are responsible for the tax on the materials. If a supplier doesn't charge you sales tax at the time of purchase, then you must pay use tax.

Scenario 2:

If you're a prime contractor, and you buy materials for a job without paying sales tax and give the materials to a subcontractor to install, either of you can be held responsible for paying the use tax due on the purchase of the materials.

Scenario 3:

If you're a prime contractor, and you have a tax-exempt customer who buys materials without paying sales or use tax, and this customer gives the materials to you to improve real property, then you are responsible for paying use tax on the purchase of the materials. But, if you hire a subcontractor to do the installation, then either you or the subcontractor can be held responsible for paying the use tax.

Some customers don't have to pay any tax when buying materials because they're tax-exempt. They include federal, state, and local government agencies, and Idaho businesses and organizations that have been granted a sales tax exemption by the Legislature. One example is a not-for-profit hospital. But, even if the customer is exempt from paying sales or use tax, this exemption does not carry over to the contractor. The contractor is still responsible for paying sales or use tax on the materials used for the job.

If you're a contractor, there are two exemptions that allow you to buy materials without having to pay sales or use tax. The first exemption applies to out-of-state contracts. If you buy construction materials in Idaho to use in a state that doesn't have a sales tax, such as Oregon or Montana, or if you're not required to pay a use tax or a similar tax in the other state where you take the materials, you can buy the materials without paying sales tax.

This exemption doesn't apply to homeowners working on their own property; it's only for contractors who do work for other customers. You must fill out an ST-101 form, Sales Tax Resale or Exemption Certificate, and give it to your supplier to qualify for this exemption. For more information, refer to the Idaho Code section for "Out of State Contracts" and our "Contractors" brochure, both listed at the end of this presentation.

The other time a sales tax exemption applies to contractors is when the equipment and materials you buy are used in a production process. This is explained in the Idaho Code section for "Production Exemption" and our "Production Exemption" brochure, both listed at the end of this presentation. You can buy production equipment and parts for that equipment without paying

sales tax, as long as the parts and equipment don't become part of the real property. But, tools and equipment you use to install production equipment are taxable. Once again, you must fill out an ST-101 form, Sales Tax Resale or Exemption Certificate, and give it to your supplier to qualify for this exemption.

To pay use tax, you need to have a use tax reporting number. The Tax Commission gives you this number when you register your business in Idaho, or you can apply for one later when you need one. If you need instructions on how to register a business, see the references at the end of this presentation.

Sales tax law is complex. This brief online class addresses only the most basic sales tax situations that apply to contractors working in Idaho. If your situation varies from the examples we've given, or if you have questions, please call the Tax Commission at (800) 972-7660, or e-mail us at TAXREP@tax.idaho.gov.

Idaho Forms:

IBR-1 (Idaho Business Registration) to apply for a sales or use tax reporting number. You can also get this number by registering online at www.business.idaho.gov.

ST-101 (Sales Tax Resale or Exemption Certificate) to give to suppliers when you make tax-exempt purchases.
http://tax.idaho.gov/pdf/sales/2007/ST00621_frmST101_SalesTxResale-ExemptCertif_09-27-07.pdf

Idaho Code:

66-3622B (Out-of-State Contracts)
<http://www3.state.id.us/cgi-bin/newidst?sctid=630360022B.K>

66-3622D (Production Exemption)
<http://www3.state.id.us/cgi-bin/newidst?sctid=630360022D.K>

66-3609 (Retail Sale – Sale at Retail)
<http://www3.state.id.us/cgi-bin/newidst?sctid=630360009.K>

Idaho Administrative Rules:

35.01.02.010 (Definitions)

<http://adm.idaho.gov/adminrules/rules/idapa35/0102.pdf#page=5>

35.01.02.012 (Contractors Improving Real Property)

<http://adm.idaho.gov/adminrules/rules/idapa35/0102.pdf#page=9>

35.01.02.066 (Contractor's Use of Tangible Personal Property)

<http://adm.idaho.gov/adminrules/rules/idapa35/0102.pdf#page=55>

Tax Commission Brochures:

[#40 Contractors: An Educational Guide to Sales Tax in the State of Idaho](#)

[#2 Use Tax](#) (Covers trade-in allowances, trade discounts offered by retailers, interest & finance charges on goods you buy, etc.)

[#5 Retailers and Wholesalers: Making Exempt Sales](#) (See "Contractor Exemptions")

[#6 Out-of-State Businesses](#) (See the example: "A Montana contractor comes to Idaho to build a road..." under the "Bringing Goods to Idaho" section.)

[#30 Production Exemption](#) (See the example: "A sand and gravel company crushes gravel both for road-building activities and to sell at its retail yard..." under the "Who Does Not Qualify?" section.)

[#31 Farming & Ranching](#) (See No. 2 under "The Agricultural Irrigation Exemption" section.)